1338.

SUPREME COURT OF THE UNITED STATES,

No. 45.

JOHN BROWN, PL'FF IN ER.,

vs.

—— DUCHESNE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

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Writ of Error.

JOHN BROWN
vs.
DUCHESNE.

UNITED STATES, *ss:*

The President of the United States to the Judges of the Circuit Court holden in and for the District of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between John Brown, plaintiff, and Duchesne, defendant, in the plea of the case a manifest error has intervened to the great damage of the said Brown, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate Justices of the Supreme Court of the United States, on the first Monday in December next, at Washington, being the present seat of the national government, that the record and process aforesaid, being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this thirtieth day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

Allowed by B. R. Curtis, Asso. Jus. S. C. U. S.

H. W. FULLER,
Clerk.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, Henry W. Fuller, clerk of the United States for the first circuit within and for the district of Massachusetts, in pursuance of the command contained in the within writ of error, do make return thereof, and annex hereto and transmit herewith a true copy of the entire record and of all proceedings in the cause or suit

of John Brown against Duchesne, wherein judgment was rendered in the said Circuit Court of the United States.

I also annex the citation served upon the issuing of said writ of error, a copy of which writ has been this day lodged in the clerk's office, by the plaintiff in error, for the adverse party.

In witness whereof, I have hereunto set my hand and the seal of the said Circuit Court, this first day of December, anno Domini one thousand eight hundred and fifty-five.

[L. S.]

H. W. FULLER,
Clerk.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

JOHN BROWN
vs.
DUCHESNE.

To Duchesne, greeting:

Whereas, the Circuit Court of the United States for the first circuit and district of Massachusetts, on the second day of July, A. D. 1855, rendered a final judgment in a certain cause then depending therein, between John Brown as plaintiff and you as defendant, on which said judgment the said Brown hath caused a writ of error to be sued out from the said Circuit Court, returnable at the next term of the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the first Monday of December next, and the said Brown hath filed in said C. Court security to prosecute his said suit as required by law, and thereupon the said writ hath been duly allowed, the Court deeming it reasonable to allow the same:

Now, therefore, you are hereby notified of the issuing and allowance of the said writ of error, and are hereby cited to appear, if you see cause, at the said Supreme Court of the United States, next to be holden at Washington aforesaid, on the first Monday of December next, to make answer thereto.

Given under my hand seal this eleventh day of September, A. D. 1855.

B. R. CURTIS,
Associate Justice of the Su. Ct. U. S.

UNITED STATES OF AMERICA,
Mass. District.

BOSTON, *October* 22, 1855.

Pursuant hereunto, I have notified the within named Duchesne, by

giving in hand to Ivers J. Austin, esquire, his attorney of record, a true and attested copy hereof.

WATSON FREEMAN,
U. S. Marshal.

Ser. $2 06
Copy 1 00
$3 06

UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a Circuit Court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, before the honorable Benjamin R. Curtis, associate justice, and the honorable Peleg Sprague, district judge—

John Brown, of Westerly, in the State of Rhode Island and Providence Plantations, being one of the United States, versus Duchesne, of Granville, Newfoundland, being one of the provinces of Great Britain, captain of the schooner "Alchyon," in a plea of the case for that the said defendant, on the day of the purchase of this writ, being indebted to the plaintiff in one thousand dollars for goods sold and delivered by the plaintiff to the defendants; and in the amount for work done and materials for the same provided by the plaintiff for the defendants at his request; and in the same amount for money lent by the plaintiff to the defendants; and in the same amount for money received by the defendants to the use of the plaintiff; and in the same amount for money paid by the plaintiff for the use of the defendants at his request; and in the same amount for money due from the defendants to the plaintiff for interest of money before then due and owing from the defendants to the plaintiff, and by the plaintiff forborne to the defendants at the defendants' request, for a long time before then elapsed; and in the further sum of one thousand dollars and cents, according to the account annexed,—in consideration thereof, promised to pay the same amount to the plaintiff on demand; yet he has not paid the same. Also, for that the pl'tff was the original and first inventor of a certain new and useful machine, device, or improvement in the letters patent hereinafter mentioned and fully described, the same being a new and useful improvement in constructing the gaft of sail-vessels, which said improvement was not used before his said invention, and was not at the time of his said application for a patent as hereinafter mentioned in public use or on sale with his consent or allowance; and the pl'tff being as aforesaid the inventor thereof, and being also a citizen of the United States, on the 31st day of December, in the year 1838, upon due application thereof,

did obtain letters patent therefor in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of State and countersigned by the Commissioner of Patents of the United States, bearing date the year and date aforesaid, whereby they were secured to him, his heirs, executors, and administrators or assigns, for the term of 14 years thereafter, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, machine, or improvement, as by the said letters patent in court, to be provided, will fully appear. And the pl'ff further says, that, from the time of the granting to him of the said letters patent hitherto he has made, used, or vended to others to be used, the said machine or improvement, and has vended the right to use the same to his great use, advantage, and profit. Yet the said ( ) well knowing the premises, but contriving to injure the plaintiff, did, on the 30th day of September, 1853, and on divers days before and afterwards, during the said term of 14 years mentioned in said letters patent, and before the purchase of this writ, at Boston, in the county of Suffolk, in the district of Massachusetts, unlawfully and wrongfully, and without the consent and allowance and against the will of the pl'tff, make and use the said invention in violation and infringement of the exclusive right so secured to the plt'ff by said letters patent as aforesaid, and contrary to the form of the statute of the United States in such case made and provided, whereby the plt'ff has been greatly injured and deprived of great profits and advantages which he might otherwise and would have derived from said invention and has actually sustained to the amount of $1,000, and has by force of the statute aforesaid, an action has been accrued to him to recover said actual damage, and such additional amount not exceeding in the whole three times the amount of such actual damages as the Court may see fit to order and adjudge, yet the said def't, though requested, has never paid the same or any part thereof to the pl'tff, but to pay the same hath refused and refuses so to do, to the damage of the said plaintiff, as he says, the sum of one thousand dollars. This action was entered at the October term, A. D. 1853, of this Court, and now the pl'tff, in pursuance of leave first had and obtained from the Court, here amends his writ by inserting at the end of the first paragraph—ending as follows: "Letters patent in Court, to be provided, will fully appear"—the words and figures following, to wit: "And said pl'tff avers that said letters patent were upon his application, and due notice extended for the term of seven years from and after the expiration of the first term, in the words and figures following, to wit: Patent Office, December 11, 1852. 'Whereas, upon the petition of John Brown, of Stonington, Connecticut, for an extension of the above patent granted to the said Brown, on the 31st day of December, 1838, the undersigned, Commissioner of Patents, in accordance with the 18th section of the act of Congress, approved the 4th day of July, 1836, entitled 'An act to

promote the progress of the useful arts, and to repeal all acts heretofore made for that purpose;' and the act approved the 27th day of May, 1848, entitled 'An act to promote additional examiners in the Patent Office and for other purposes,' did, on the 11th day of December, 1852, certify that the said patent ought to be extended: now, therefore, I, S. H. Hodges, Commissioner of Patents, by virtue of the power vested in me by said acts of Congress, do renew and extend said patent, and certify that the same is hereby extended for the term of seven years, from and after the expiration of the first term, viz: the 31st day of December, 1852, which certificate being duly entered of record in the Patent Office, the said patent has now the same effect in law as though the same had been originally granted for the term of twenty-one years. In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed the 11th day of December, 1852, and of the independence of the United States the seventy-sixth. S. H. Hodges, Commissioner of Patents." And the said plaintiff further avers, that said certificate was duly entered of record in the Patent Office. And thereupon, to wit, on the 17th day of October, 1853, the defendant filed a general demurrer to the pl'tff's declaration, which, by leave of Court, was subsequently withdrawn; and on the 30th day of January, 1854, the def't, by leave of Court, filed certain special pleas, to which a special demurrer was filed by the pl'tff on the 22d day of April, 1854. This case was thence continued from term to term, to the October term, A. D. 1854, of this Court, when the following agreement was filed, to wit: It is agreed by the parties in this case, that, by leave of Court, the general demurrer filed October 17th, 1853, and the pleas of the defendant filed Jan'y 30th, 1854, and the special demurrer filed April 22d, 1854, may be withdrawn, and that no extended record be made thereof, and that in order to present the questions involved in the case more directly, new pleadings on the amended declaration may be filed. And afterwards, to wit, April 13, 1855, by leave of Court, the following pleas were filed, to wit: And now the said Duchesne comes and defends the wrong and injury, when, &c., and says that he is not guilty of the supposed grievances laid to his charge in manner and form as the said John Brown hath above thereof complained against him, and of this, he puts himself on the country, by his attorney, and the plt'ff doth the like by his attorney. And for a further plea in this behalf, leave of the Court having been first asked and obtained, the said Duchesne saith that the said John Brown ought not to have or maintain his aforesaid action thereof against him, the said Duchesne, because he says that the device, machine, or improvement in the construction of the gaffs of sailing vessels, for which the said John Brown has obtained the letters patent of the United States, and which said device, machine, or improvement the said John Brown alleges that the said Duchesne has made and used in violation or infringement of the right of the said John Brown, under the said letters patent was

used by him, the said Duchesne, only in the gaffs of a certain French schooner called the Alcyon, of which said schooner the said Duchesne, at the date of the service of the writ in this action, and for a long time previous thereto, was the master and commander. And the said Duchesne further saith that he was born in France, and is, and was at the date of the said service, a subject of the Empire of France, and an alien to each and every of the United States; that the said schooner Alcyon was built in France, and was launched at one of the ports of France, in the month of March, which was in the year eighteen hundred and fifty-three, and was then and ever since has been wholly and solely owned by Le Campion and Gheroulde, of Granville, in said France, merchants, then and ever since subjects of the Empire of France, and aliens to each and every of the United States; that the said schooner Alcyon, at the date of the service aforesaid, was wholly manned by French subjects, and was upon a lawful voyage in the service of the said Le Campion and Gheroulde, under the protection of the flag of France, and the treaties and conventions between the Government of France and the Government of the United States, from St. Peters, in the island of Miquelon, one of the colonies or dependencies of France to Boston, in the district of Massachusetts, and thence back to St. Peters aforesaid, which said voyage was not ended at the date of the service aforesaid. And the said Duchesne further saith that the said device, machine, or improvement used as aforesaid, at the date of the said service, in the gaffs of the said schooner Alcyon, was put or placed in the said gaffs at or near the time the said schooner was launched as aforesaid, and in Granville aforesaid, by the builder or other person employed by the said Le Campion and Theroulde, to fit and prepare the said schooner for sea. And this the said Duchesne is ready to verify. Whereupon, he prays judgment if the said John Brown ought to have or maintain his aforesaid action thereof against him. And for a further plea in this behalf, leave of the Court having been first asked and obtained, the said Duchesne saith that the said John Brown ought not to have or maintain his aforesaid action thereof, against him, because he saith that the device, machine, or improvement in the construction of the gaffs of sailing vessels, for which the said John Brown has obtained the letters patent of the United States, and which said device, machine, or improvement the said John Brown alleges that the said Duchesne, has made and used in violation or infringement of the right of the said John Brown, under the said letters patent was used by him, the said Duchesne, only in the gaffs of a certain French schooner called the Alcyon, of which said schooner, the said Duchesne, at the date of the service of the writ in this action, and for a long time previous thereto, was the master and commander. And the said Duchesne further saith, that he was born in France, and is, and was at the date of the service aforesaid, a subject of France as aforesaid; that the said schooner Alcyon was built in France, and

launched as aforesaid at one of the ports of France, in the aforesaid month of March, and was then and ever since has been wholly and solely owned by the said Le Campion and Theroulde, citizens of said Granville, and subjects of France as aforesaid, and at the date of the service aforesaid was wholly manned by French subjects, and was upon the aforesaid lawful and unfinished voyage as aforesaid, in the service of the said Le Campion and Theroulde, under the protection of the French flag and the treaties and conventions aforesaid. And the said Duchesne further saith, that the said device, machine, or improvement, used in the gaffs of the said schooner Alcyon at the date of the said service, was put or placed in the said gaffs at or near the time the said schooner was launched as aforesaid, and in Granville aforesaid, by the builder or other person employed as aforesaid, and that said device, machine, or improvement so used in the said gaffs of the said schooner, had been for a long time previous to the date of the patent of the said Brown, and for a long time, to wit, more than twenty years previous to the launching of the said schooner, and at the date of the said launching was in common, open, and notorious use in many French vessels of the French mercantile marine, and was at the time of the said launching, and for more than twenty years previous thereto had been, the common and well-known property of every French subject. And this the said Duchesne is ready to verify. Wherefore, he prays judgment whether the said John Brown ought to have or maintain his aforesaid action thereof against him, by his attorney. And the plaintiff says that the special pleas by the said Duchesne in manner and form aforesaid pleaded, and the matters in the same contained, are insufficient in law to bar the plaintiff from having his said action, and that he is not bound by law to answer to the same, and this he is ready to verify: wherefore, for want of a sufficient plea in this behalf, the plaintiff prays judgment and for his damages; whereupon the following joinder in demurrer was filed by the def't, viz: And the said Duchesne saith, that his two several special pleas by him above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said Brown from having or maintaining his aforesaid action thereof against him, the said Duchesne, and that he, the said Duchesne, is ready to verify and prove the same when, where, and in such manner as the said Court here shall direct and award. Wherefore, inasmuch as the said Brown hath not answered the said pleas or either of them, nor hitherto in any manner denied the same or either of them, the said Duchesne prays judgment, and that the said Brown may be barred from having or maintaining his aforesaid action thereof against him, the said Duchesne, &c. The case was thence continued to the present term of this Court, when the same was fully heard and argued by counsel on the said pleadings. And thereupon, and upon consideration thereof, it is considered by the Court that the two